

REMARKS

In their Request for Reconsideration filed October 19, 2006, Applicants demonstrated that the claimed invention is not obvious under 35 U.S.C. § 103 over Robinson alone, Robinson in view of Stoltz, or Lorant in view of Fontinos. As part of their showing, Applicants emphasized that examples 1-6 and comparative examples 1-6 in the present application (pages 32-38) demonstrate that using the claimed lipophilic amino acids results in stable emulsion compositions, whereas compositions lacking such lipophilic amino acids are unstable. Applicants also demonstrated that no motivation would have existed to combine the secondary references with the primary references with the expectation that a stable, acceptable emulsion would result.

Further to their earlier Request for Reconsideration, Applicants submit herewith a Rule 132 declaration demonstrating that using the claimed lipophilic amino acids results in unexpectedly stable emulsion compositions. Specifically, in the Rule 132 declaration, six compositions were prepared. These compositions were identical except that two compositions contained lipophilic amino acids, two compositions contained non-lipophilic amino acids, and two compositions did not contain any amino acids. (Rule 132 dec., pars. 4 and 5).

Comparative Compositions 1 and 2 which did not contain any amino acid, lipophilic or non-lipophilic, were unstable compositions. (Rule 132 dec., par. 6). That is, these two compositions were unstable dispersions having large oily globules throughout. (Rule 132 dec., par. 6). Such large oily globules are characteristic of unstable compositions. (Rule 132 dec., par. 6).

Comparative Compositions 1A and 2A which contained a non-lipophilic amino acid were also unstable compositions. (Rule 132 dec., par. 7). That is, these two compositions

were also unstable dispersions having large oily globules throughout. (Rule 132 dec., par. 7). Thus, both compositions having no amino acid (comparative compositions 1 and 2) and compositions containing a non-lipophilic amino acid (comparative compositions 1A and 2A) were unstable, meaning among other things that these compositions were unacceptable for commercial use. (Rule 132 dec., par. 7). In stark contrast, Invention Composition 1B and 2B were stable, cream compositions -- they were fine dispersions and did not contain large oily globules. (Rule 132 dec., par. 8).

Given the similarity of Compositions 1, 1A and 1B, and Compositions 2, 2A and 2B, it was surprising and unexpected that compositions containing a lipophilic amino acid were stable, whereas identical compositions lacking a lipophilic amino acid were not stable. (Rule 132 dec., par. 9). Such surprising and unexpected results are fully representative of the present invention. (Rule 132 dec., par. 10).

The fact that the compositions of the present invention are more stable is commercially significant. (Rule 132 dec., par. 11). More stable products are more desirable to consumers and, thus, more commercially viable. (Rule 132 dec., par. 11). Also, active ingredients in more stable products are more likely to maintain activity longer than in unstable products, making such stable products more desirable to consumers. (Rule 132 dec., par. 11).

Clearly, one skilled in the art would not have been motivated to use the claimed lipophilic amino acids in emulsions with the expectation that a stable emulsion would result, particularly given that non-lipophilic amino acids do not yield such stable emulsions. In view of this, no *prima facie* case of obviousness could exist, meaning that the rejections under 35 U.S.C. § 103 are improper. At the very least, the discussion in the October 19 Request for Reconsideration, the discussion above, the data in the present application and the attached

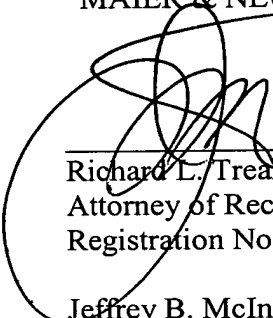
Rule 132 declaration demonstrate unexpected and surprising results sufficient to rebut any hypothetical case of *prima facie* case of obviousness which might exist.

For all of the above reasons as well as the reasons set forth in the October 19, 2006, Request for Reconsideration, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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